

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2017

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P.Nos.1174 to 1176 of 2017

D.Suseela ...Petitioner in W.P.No.1174/17
H.S.Siddagangaiah ...Petitioner in W.P.No.1175/17
P.Premavathi ...Petitioner in W.P.No.1176/17

Vs

- 1.The State of Tamil Nadu,
Rep. By the Secretary to Government,
Agriculture Department,
Fort St. George, Chennai - 9.
- 2.The Commissioner / Director of Agriculture,
Chepauk, Chennai - 5.
- 3.The Director of Horticulture & Plantation Crops,
Chepauk, Chennai - 5. ... Respondents in all WPs

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India seeking a writ of certiorari to call for the impugned proceedings of the third respondent in GES1/22730/2014, dated 05.01.2017, and quash the same.

For petitioners: Mr.V.Selvaraj

For Respondents: Mr.V.Jayaprakash Narayanan, Spl.GP

O R D E R

By way of filing these writ petitions, the petitioners seek to quash the impugned proceedings dated 05.01.2017 of the third respondent / the Director of Horticulture and Plantation Crops, Chennai, in and by which, the petitioners were repatriated to the Agricultural Department as Assistant Directors of Agriculture.

2. The petitioners were selected through the Tamil Nadu Public Service Commission in the Agricultural Department as Agricultural Officers. Thereafter, the Government issued a G.O.Ms.No.537, Agricultural Department, dated 24.12.2007,

restructuring the Departments of Agriculture and Horticulture. Subsequently, the third respondent, by giving promotion to the petitioners, posted them as Assistant Director of Horticulture. While they were working in the Horticulture Department, they were required to exercise their option for retention in the Horticulture Department to go back to their parent department. Accordingly, they have submitted their representation dated 10.01.2013 exercising their option to remain in the Horticulture Department with the protection of seniority as per the TNPSC. Finally, the the second respondent vide his proceedings dated 28.06.2016 repatriated 18 officers including the petitioners working as Assistant Directors of Horticulture as Assistant Directors of Agriculture. On receipt of such proceedings, the petitioners have submitted their further representation dated 29.06.2016 through proper channel requesting the respondent to retain them in the Department of Horticulture and Plantation Crops. However, the third respondent vide his proceedings dated 14.07.2016 relieved all the above said 18 officers except the petitioners. Subsequently, the third respondent has now passed the impugned proceedings dated 05.01.2017 transferring the petitioners to the Agricultural Department as Assistant Directors of Agriculture stating that they have opted to go back to the Agricultural Department as they have not at all given their willingness to go back to their parent department.

3. Assailing the impugned proceedings, learned counsel for the petitioners submitted that at no point of time, the petitioners have expressed their willingness to go back to the Agricultural Department. In fact, a format containing two options was given by the respondent department and they are;

(i) to remain in the Horticulture Department with their seniority as per the TNPSC number;

(ii) to come back to the parent department i.e. Agricultural Department.

In the said format, the petitioners have exercised option (i) i.e. to remain in the Horticulture Department as per their seniority maintained in the TNPSC. Therefore, when only two options are available in the format given by the department and the petitioners expressed their willingness to remain in the Horticulture Department, it is absolutely unjustifiable to make a reference in the impugned order that they have opted to go back to the Agricultural Department, hence, he pleaded, they should be sent back to the Horticulture Department. Concluding his argument, Mr.V.Selvaraj, learned counsel, would contend that while retaining the petitioners in the Horticulture Unit, the respondent should follow common seniority.

4. Inviting the attention of this Court to a judgment of this Court in S.Muniyandi Vs. State of Tamil Nadu (Madras) [2013 (1) MLJ 919], learned counsel submitted that while preparing the common seniority list, the seniority as assigned in the Tamil Nadu Public Service Commission will have to be taken as the basis, therefore, the option exercised by the petitioners to remain in the Horticulture Department as per the seniority list maintained by the TNPSC cannot be found fault with. Moreover, when G.O.Ms.No.537, Agriculture Department, dated 24.12.2007, and G.O.Ms.No.548, Agriculture Department, dated 28.12.2007, were issued stating that Rule 35 A of the Tamil Nadu State and Subordinate Service Rules would be applicable in the case of the petitioners, the respondent ought not to have repatriated the petitioners on the ground that they have given willingness to go back to the parent department.

5. Per contra, learned Special Government Pleader for the respondents submitted that at the first instance, the petitioners have given their option to remain in the Horticulture Department with a condition to follow the ranking given by the Commission, therefore, since the said option with pre-condition has not been considered as a valid option, they were repatriated to their parent department, hence, they have no locus-standi to question the said impugned proceedings.

6. Heard the learned counsel appearing on either side and perused materials available before this Court.

7. All the petitioners were selected by the Tamil Nadu Public Service Commission and appointed as Agricultural Officers in the Agriculture Department. In the meanwhile, since the Commissioner of Horticulture and Plantation Crops has proposed to strengthen the Tamil Nadu Horticulture Department agency, the agency, being registered under the Tamil Nadu Societies Registration Act, 1975 and is acting as special purpose vehicle for receiving funds and for implementing schemes of Government of India, such as the National Horticulture Mission, Micro Irrigation and other schemes funded by various agencies for horticulture board agricultural and process food export development authority etc., the Commissioner of Horticulture and Plantation Crops has suggested for strengthening this agency by inducting staff at various levels. Similarly, the Director of Agricultural Marketing and Agri business has also stated that the Directorate of Agricultural Marketing and Agri business have to play a big role in development activity in warehousing more investments in agricultural marketing and processing so as to achieve major objectives, therefore the Government, after

examining the above proposals of four Directorates in detail, finding that there is excess staff of officers in the Directorate of Agriculture in the changed scenario, however, there is shortage of staff at crucial projects in the other three Directorates of Horticultural marketing and seed certification, had thought it fit of transferring a part of staff and to post from the Agricultural Directorate to the other three Directorates mentioned above. In this regard, after detailed examination and careful consideration, the Government directed that the re-structure proposals in respect of the Directorates of Agricultural Horticulture and Plantation Crops, Seed Certification and Organic Certification, Agricultural Marketing and Agri Business and Tamil Nadu Horticulture Department Agency to be implemented as below:

"1. The Hon'ble Minister for Agriculture made an announcement on the floor of the Assembly on 03.04.2007 that the extension activities of the Directorates of Agriculture, Horticulture, Agricultural Marketing & Agri-Business and Seed Certification have to be integrated, so as to offer all extension inputs to farmers easily. Accordingly, the existing three Tier System will be made into Two Tier System and block level staff will be increased by restructuring the Agriculture Department so as to provide technological assistance and subsidies to the farmers at one point.

10. The two wings of Agriculture viz. Extension and Research (Chemistry) are currently functioning separately under separate service rules. Rotating of staff between the two wings will enhance the technical and managerial capacity of the staff. Moreover, the qualification for both the cadres is same i.e. B.Sc. (Agri.). Therefore, these two wings will be merged so that in future, there will be only one cadre for managing both extension and research functions. Provisions will be made to ensure that the merger does not affect the seniority, promotional prospects and service conditions of each cadre. Similarly, the staff going to Horticulture, seeds Certification and Marketing from Agriculture will continue to enjoy the same seniority and promotional prospects that they are presently getting in Agricultural Department."

Accordingly, G.O.Ms.No.537, Agriculture Department dated 24.12.2007 re-structuring the Department of Agriculture and Horticulture was issued. After the said Government Order, the Government have decided to transfer a part of staff and post of Agricultural Directorate to the other three Directorates. Under these circumstances, the petitioners were also transferred to Horticulture Department and they had also joined duty as Assistant Directors of Horticulture. In view of paragraph 17(x) of the G.O.Ms.No.537, Agriculture Department dated 24.12.2007, the post under re-structuring to be permanently transferred to the Horticulture department after expiry of five years from the date of Government Order and the same shall be filled up by the Director of Horticulture and Plantation Crops by duly following the service rules of the Directorate of Horticulture and Plantation Crops, however, to maintain fairness and to avoid friction among the staff in awarding promotion and other service benefits, an opportunity was provided to the staff deployed to the Directorate of Horticulture and Plantation Crops to exercise their option for permanent absorption. Accordingly, options were called for from the petitioners either to continue in Horticulture department or to go back to Agriculture department and thereupon they were requested to submit their option on or before 10.11.2013. The petitioners also exercised their option to continue in Agriculture Department provided their TNPSC seniority number is maintained. It is at this stage the respondents took an objection that their option is an additional one, they ignored the additional option and as a result, transferred them back to the Agriculture department.

8. But, I do not find any merit thereon, for two reasons. First of all, the petitioners have given their option to continue in the Horticulture Department. Secondly, the form issued by the respondents clearly mentions that the seniority ranking given by the TNPSC should be protected as per the terms and conditions envisaged in G.O.Ms.No.537 Agriculture (AAE) Department dated 24.12.2007 and in accordance with the judgment of the Hon'ble High Court of Madras dated 19.12.2012 in W.P.Nos.19901, 25894, 29016 of 2008 and W.P.Nos.12025 and 13298 of 2012. Therefore, when the petitioners have filled in the option form served by the respondents, it is not open to the respondents to say that they have exercised their option to continue in Horticulture Department without a condition that their ranking assigned by the TNPSC should be protected.

9. Secondly, this Court, in a reported judgment in S.Mayandi and others v. State of Tamil Nadu and others [2013 (1) MLJ 919], in paragraph-67 therein have clarified that while preparing the impugned seniority list, the seniority as assigned by the Tamil Nadu Public Service Commission is taken as the

basis and such course was also accepted by this Court. This is for the reason that Rule 35(a) of the Tamil Nadu State and Subordinate Service Rules also supports the case of the department. On this score, this Court, in the said judgment, has held that there is no infirmity in paragraph-11 of G.O.Ms.No.537 dated 24.12.2007 and also in G.O.Ms.No.548, dated 28.12.2007. Finally, paragraphs 12 and 17 of G.O.Ms.No.537 having been upheld, the petitioners, who were deployed to Horticulture Department, after exercising their option to continue in the Horticulture Department, are to enjoy the seniority assigned by the TNPSC.

10. In a similar order passed by me in W.P.(MD). Nos.3794 of 2014, etc., dated 21.09.2015 (C.Kannan v. State of Tamil Nadu and others), by recording the submission made by the learned Additional Advocate General therein that persons, who have already exercised their options to remain in the Horticulture Department, are already continuing in that Department, I have allowed the claim of the petitioners therein to continue their services in the Horticulture Department.

11. Thus, for the reasons stated above, the impugned order repatriating them to the parent department is wholly unjustified. Accordingly, for the reasons mentioned above, the same is set aside and the writ petition stands allowed. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

सत्यमेव जयते

To

1.The Secretary to Government,
Agriculture Department,
Fort St. George, Chennai - 9.

2.The Commissioner / Director of Agriculture,
Chepauk, Chennai - 5.

3.The Director of Horticulture & Plantation Crops,
Chepauk, Chennai - 5.

+3cc to Mr.V.Selvaraj, Advocate Sr.26087

+1cc to the Government Pleader Sr.26414

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